> when as a practical matter, because of lack of time, such matters cannot be answered or their truth determined until after the election is over." 278 Ala. 188, 195–196, 176 So. 2d 884, 890.

This argument, even if it were relevant to the constitutionality of the law, has a fatal flaw. The state statute leaves people free to hurl their campaign charges up to the last minute of the day before election. The law held valid by the Alabama Supreme Court then goes on to make it a crime to answer those "last-minute" charges on election day, the only time they can be effectively answered. Because the law prevents any adequate reply to these charges, it is wholly ineffective in protecting the electorate "from confusive last-minute charges and countercharges." We hold that no test of reasonableness can save a state law from invalidation as a violation of the First Amendment when that law makes it a crime for a newspaper editor to do no more than urge people to vote one way or another in a publicly held election.

The judgment of the Supreme Court of Alabama is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 597.—October Term, 1965.

James E. Mills, Appellant, v. State of Alabama. } On Appeal From the Supreme Court of Alabama.

[May 23, 1966.]

Mr. Justice Douglas, with whom Mr. Justice Brennan joins, concurring.

Although I join the opinion of the Court, I think it appropriate to add a few words about the finality of the judgment we reverse today, particularly in view of the observation in the dissenting opinion that "limitations on the jurisdiction of the Court . . . should be respected and not turned on and off at the pleasure of its members or to suit the convenience of litigants."

The decision of the Alabama Supreme Court approved a law which, in my view, is a blatant violation of freedom of the press. The threat of penal sanctions has, we are told, already taken its toll in Alabama: the Alabama Press Association and the Southern Newspaper Publishers Associations as *amici curiae*, tell us that since November 1962 editorial comment on election day has been nonexistent in Alabama. The chilling effect of this prosecution is thus anything but hypothetical; it is currently being experienced by the newspapers and the people of Alabama.

We deal here with the rights of free speech and press in a basic form: the right to express views on matters before the electorate. In light of petitioner's concession that he has no other defenses to offer should the case go to trial, compare *Pope* v. *Atlantic Coast Line R. Co.*, 345 U. S. 379; *Richfield Oil Corp.* v. *State Board of Equalization*, 329 U. S. 69, and considering the importance of the First Amendment rights at stake in this

litigation, it would require regard for some remote, theoretical interests of federalism to conclude that this Court lacks jurisdiction because of the unlikely possibility that a jury *might* disregard a trial judge's instructions and acquit.

Indeed, even had petitioner been unwilling to concede that he has no defense—apart from the constitutional question—to the charges against him, we would be warranted in reviewing this case. That result follows *a fortiori* from our holdings that where First Amendment rights are jeopardized by a state prosecution which, by its very nature, threatens to deter others from exercising their First Amendment rights, a federal court will take the extraordinary step of enjoining the state prosecution. *Dombrowski* v. *Pfister,* 380 U. S. 479; *Cameron* v. *Johnson,* 381 U. S. 741. As already noted, this case has brought editorial comment on election day to a halt throughout the State of Alabama. Our observation in *NAACP* v. *Button,* 371 U. S. 415, 433, has grim relevance here: "The threat of sanctions may deter . . . exercise [of First Amendment rights] almost as potently as the actual application of sanctions." *

For these reasons, and for the reasons stated in the opinion of the Court, I conclude that the judgment is final.

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*In *California* v. *Stewart* (U. S. Supreme Court Journal, February 21, 1966, p. 236), where a state court reversed a criminal conviction on federal grounds, we ruled on a motion to dismiss that the State may obtain review in this Court even though a new trial remained to be held. We reached that conclusion because otherwise the State would be permanently precluded from raising the federal question, state law not permitting the prosecution to appeal from an acquittal. And see *Construction Laborers* v. *Curry,* 371 U. S. 542; *Mercantile National Bank* v. *Langdeau,* 371 U. S. 555.

SUPREME COURT OF THE UNITED STATES

No. 597.—October Term, 1965.

James E. Mills, Appellant, v. State of Alabama. } On Appeal From the Supreme Court of Alabama.

[May 23, 1966.]

Separate opinion of Mr. Justice Harlan.

In my opinion the petitioner is not here on a "final" state judgment and therefore under 28 U. S. C. § 1257 (1964 ed.) the Court has no jurisdiction to entertain this appeal. *Republic Natural Gas Co.* v. *Oklahoma,* 334 U. S. 62; cf. *Parr* v. *United States,* 351 U. S. 513.

Although his demurrer to the criminal complaint has been overruled by the highest court of the State, the petitioner still faces a trial on the charges against him. If the jury [1] fails to convict—a possibility which, unless the courtroom antennae of a former trial lawyer have become dimmed by his years on the bench, is by no means remote in a case so unusual as this one is—the constitutional issue now decided will have been prematurely adjudicated. But even were one mistaken in thinking that a jury might well take the bit in its teeth and acquit, despite the Alabama Supreme Court's ruling on the demurrer and the petitioner's admitted authorship of the editorial in question, the federal statute nonetheless commands us not to adjudicate the issue decided until the prosecution has run its final course in the state courts, adversely to the petitioner.

Although of course much can be said in favor of deciding the constitutional issue now, and both sides have

[1] At oral argument in this Court appellant's counsel conceded that a jury trial was still obtainable, see Ala. Code, Tit. 13, § 326; Tit. 15, § 321 (1958 ed.), and that it might result in an acquittal.

indicated their desire that we do so, I continue to believe that constitutionally permissible limitations on the jurisdiction of this Court, such as those contained in § 1257 undoubtedly are, should be respected and not turned on and off at the pleasure of its members or to suit the convenience of litigants.[2] If the traditional federal policy of "finality" is to be changed, Congress is the body to do it. I would dismiss this appeal for want of jurisdiction.

Since the Court has decided otherwise, however, I feel warranted in making a summary statement of my views on the merits of the case. I agree with the Court that the decision below cannot stand. But I would rest reversal on the ground that the relevant provision of the Alabama statute—"to do any electioneering or to solicit any votes [on election day] . . . in support of or in opposition to any proposition that is being voted on on the day on which the election affecting such candidates or propositions is being held"—did not give the petitioner, particularly in the context of the rest of the statute (*ante*, p. —, n. 2) and in the absence of any relevant authoritative state judicial decision, fair warning that the publication of an editorial of this kind was reached by the foregoing provisions of the Alabama Corrupt Practices Act. See *Winters* v. *New York*, 333 U. S. 507. I deem a broader holding unnecessary.

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[2] Compare *Local 438, Construction Laborers' Union* v. *Curry*, 371 U. S. 542; and *Mercantile Nat'l Bank* v. *Langdeau*, 371 U. S. 555. The three cases cited by the Court, *ante*, p. 4, fall short of supporting the "finality" of the judgment before us. None of them involved jury trials, and in each instance the case was returned to the lower court in a posture where as a practical matter all that remained to be done was to enter judgment. What is done today more than ever erodes the final judgment rule.